

IN THE MATTER OF THE IMPASSE

BETWEEN

CRAWFORD COUNTY,

Employer,

and

CRAWFORD COUNTY HIGHWAY
& ENGINEERING EMPLOYEES,

Union.

REPORT OF FACT FINDER

**WILFORD H. STONE, FACT
FINDER**

Issued: July 18, 2005

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PUBLIC EMPLOYMENT
RELATIONS BOARD

A. APPEARANCES

For Crawford County, Iowa:

D. R. Franck, Attorney
Paul Assman, County Engineer
Steve Ulmer, Chair Board of Supervisors
Dean Hargens, Board of Supervisors
Chuck Ettleman, Assistant City Engineer

For Union:

William W. Ranniger, Attorney
Marc Gosch, Roadside Technician
Daryl Pedersen, Roadside Technician
Daniel B. Eiten, Roadside Technician
Ken Roecker, Roadside Technician

B. INTRODUCTION/STATEMENT OF JURISDICTION

This matter proceeded to a fact finding hearing pursuant to the statutory procedures established in Iowa Code Chapter 20 (2005). The undersigned was selected to serve as a fact finder from a list furnished to the parties by the Public Employment Relations Board.

Pursuant to the parties' agreement, the fact finding hearing was held beginning at 1:00 p.m., June 28, 2005, at the Crawford County Courthouse in Denison, Iowa. The hearing was electronically recorded. Crawford County submitted an "objection to submission of Union final offer to fact finder," and also sent a copy via facsimile to the Iowa Public Employment Relations Board for resolution. June 29, 2005, PERB issued an Order staying the "fact finding proceedings" until further order, in light of the Employer's request for ruling on the negotiability status of two bargaining proposals. July 5, 2005, PERB ruled on the issues and dissolved the stay.

In the course of the hearing, both parties submitted their evidence and were given full opportunity to introduce evidence, facts and present argument, rebuttal and surrebuttal in support of their respective positions. The parties' representatives, Rick Franck and William W. Ranniger, presented most of the evidence, and Daniel Eiten also testified.

The matter is now fully submitted. Representatives for both parties (Rick Franck and William W. Ranniger) vigorously argued their positions, and the oral presentations and arguments were of assistance to the fact finder. The parties chose not to submit post-hearing briefs, and the hearing was closed around 3:00 p.m. The recommendations set forth below are based upon the fact finder's weighing of all of the facts and arguments submitted.

C. EXHIBITS

Union Exhibits 1-7 were admitted without objection. The County presented a blue notebook containing various documents. The Union objected to the evidence regarding the County's comparability group, on the grounds that it was

unclear whether the information shown involved "full-time" or "seasonal" employees. The evidence was admitted subject to the objection.

D. FACT FINDING CRITERIA

While Iowa Code Chapter 20.22(a)(2005) lists specific criteria to be used by an arbitrator in determining the reasonableness of the parties' arbitration proposals, the statute is silent concerning fact finders. Nonetheless, it is now well established that it was the statute's intent that fact finders also make their recommendations based upon the statutory criteria in Iowa Code 20.22(a)(2002):

The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

1. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
2. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
3. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
4. The power of the public employer to levy taxes and appropriate funds for the conduct of its business.

E. ITEMS AT IMPASSE/FINAL OFFERS

1. **Article 13 – Leaves of Absence (Sick Leave and "Bereavement [sic]" Leave.** See attached exhibits containing the parties fact finding offers.

2. **Article 14 – Holidays.** Id.
3. **Article 15 – Vacation.** Id.
4. **Article 17 – Insurance.** Id.
5. **Article 18 – Longevity.** Id.

6. Job Classification & Hourly Wage Rates. Id.

7. Employment Status: Advancement to Full-Time Employee Status. Id. See also PERB's July 5, 2005, Order (Case No. 7110).

7. Retroactive Wages to July 1, 2004. Id. See also PERB's July 5, 2005, Order (Case No. 7110).

F. BACKGROUND

Crawford County is located in western Iowa. Its population is around 16,942, and the County has 1,215 miles of roads to maintain. The county seat is Denison, Iowa. The "Crawford County Highway and Engineering Employees" bargaining unit has apparently represented certain employees in the secondary roads department since around August 16, 1979. See Union Exhibit 4, Article 1. The current collective bargaining agreement runs from July 1, 2004, to June 30, 2007, and covers the following job classifications set forth on page 15 of the collective bargaining agreement: construction employees, maintenance employees, maintenance laborers, mechanics, engineering aids, and assistant party chief and inspector. See page 15, Union Exhibit 4. See also Union Exhibit 3 (description of existing unit). In addition to the above job classifications contained in the existing unit, Crawford County has historically also employed a group of unrepresented employees called Roadside Technicians. "Roadside Technicians" maintain, mow, seed, clear brush, and spray weeds along the county roads, which is "seasonal" work. (Testimony of Dan Eiten). The job requires a Commercial Pesticide Applicator License. They worked 40 hours a week (or longer depending on weather or workload) from March 1 – December 31, and then one day a week from January 1 – February 28, although there was testimony suggesting they now

only work nine months (April – December 31) a year effective April 1, 2004. Regardless of whether these employees work 9 or 10 months, however, it is undisputed they do not work an entire calendar year, and do not perform “road technician” type work in the winter months of January, February and March. “Roadside Technicians” historically used to receive several of the same benefits as other secondary road employees – sick leave, vacations, and longevity – although the sick leave and vacations were prorated at .83 (10/12 year) (Testimony of Dan Eiten). February 25, 2004, Crawford County transferred supervision of the Roadside Department from the Conservation Board to the County Engineer, and informed the employees that the County was now going to hire “seasonal employees,” and not “part-time regular employees” to perform the work. The work year was a maximum of nine months “seasonal employment.” They would also report to the County Engineer, although they performed the same job. See Union Exhibit 5. August 19, 2004, the Union petitioned PERB for amendment of the bargaining unit to include the “Roadside Technicians.” See Union Exhibit 3. According to the petition, the proposed new job classification would be called “Roadside Technician,” and would involve four current employees. According to the petition, the reason for seeking amendment of the unit was that the four employees apparently petitioned PERB for representation by another union, International Union of Operating Engineers, Local #234. By agreement of the parties, i.e., Crawford County, Crawford County Highway and Engineering employees bargaining unit, the Operating Engineers union, and the four employees, Roadside Technicians would be represented by the existing Crawford County bargaining unit. See Union Exhibit 3, paragraph 4. October 16, 2004,

PERB amended the bargaining unit to include the four Roadside Technicians in the existing unit.

The parties attempted negotiation and mediation to resolve the issues at impasse, and waived the budget submission deadline to continue settlement efforts. Article 7 of the collective bargaining agreement provides for the impasse procedure between the parties, and states that the fact finder shall consider those factors contained in Section 22.9(a-d) of the Public Employment Relations Act. While the parties agree that the issues of wages, holidays, vacation and sick leave are properly before the fact finder for resolution, the parties disagree on whether certain other matters are properly before the fact finder. At the June 28, 2005, fact finding hearing, the Employer submitted an "objection to submission of Union final offer to fact finder," and also faxed a copy to PERB.¹ Pursuant to the Employer's request, June 29, 2005, the fact finder also submitted a request for expedited resolution of negotiability dispute to PERB.

June 29, 2005, Chairman James R. Rearden of PERB issued an Order stating that PERB would rule on the negotiability status of two bargaining proposals, and further stated that "fact finding proceedings are hereby stayed until further Order of the Board." July 5, 2005, PERB entered its Order regarding the negotiability status of the two bargaining proposals (both are permissive), and further dissolved the stay entered in its June 29, 2005, Order. According to the Order, the fact finder's recommendations were to be issued within fifteen (15) days from the Order, or by July 20, 2005.

¹ The parties submitted briefs and other documents to PERB regarding the negotiability and prohibited practice issues. See PERB Case No. 7110. To the extent the Fact Finder was copied by the parties and PERB on the various Orders and filings, they are also incorporated into this report, as is PERB Case No.

**G. POSITIONS OF THE PARTIES, FINDINGS OF FACT, AND
RECOMMENDATIONS²**

**1. Article 13 – Leaves of Absence (Sick Leave and “Bereavement
[sic] Leave”).**

A. Crawford County Position. Crawford County argues that the Roadside Technicians should not receive any sick leave benefits, and argues that none of the comparable employees in comparable counties receive sick leave benefits, except Shelby County. See Summary: Salary and Benefits.

B. Union Position. The Union seeks sick leave similar to that of other employees in the current contract. Under the contract, regular full-time employees are granted sick leave as provided for in Article 13 of the collective bargaining agreement. The Union claims that the Roadside Technicians are regular full-time employees and are therefore eligible for sick leave.

C. Findings of Fact and Recommendation by the Fact Finder. Although “Roadside Technicians” performed job duties in Crawford County for many years, they have only been a member of the current bargaining unit since around October 6, 2004, and negotiations on their inclusion in the existing multi-year contract has occurred since November 9, 2004. According to the only exhibit regarding the bargaining history between the parties (Employer Exhibit labeled “Bargaining History”), the Union initial bargaining proposal on November 9, 2004, was to change the Roadside Technician’s work status to “full-time,” give full-time

7110.

² The background is incorporated into all findings of facts and recommendations. In addition, many of the County’s and Union’s positions were the same for each item, and have been discussed in length in different sections of this report.

benefits (vacation, sick leave and holidays) to them, and also requested a 3% salary increase for the last two years of the contract. According to the County, it responded November 17, 2004, and proposed maintaining Roadside Technicians as "seasonal part-time" employees, no full-time benefits, and a 3% wage increase effective July 1, 2005, and July 1, 2006. That offer was not accepted, and the parties proceeded to mediation on February 9, 2005. At some point, the County claims that it subsequently offered to the Union the following benefits: "Bereavement leave in season while employed," and "two personal days in season while employed." The County claims that the Union never changed its initial bargaining position. Id.

It also appears that the Roadside Technicians historically received several of the same benefits as other secondary road employees – sick leave, vacation, and longevity – although the sick leave and vacations were prorated at .83 (10/12). This bargaining history suggests that Roadside Technicians have historically received prorated benefits, and the County's recitation of the bargaining history indicates that it has offered bereavement leave in season and two personal days in season while the Roadside Technicians are employed. See County Bargaining History. Beyond what is described above, however, there is very little information regarding any other collective bargaining history between the parties, and the collective bargaining history in the comparability group regarding employees that perform seasonal work. In fact, what testimony does exist leads the Fact Finder to believe that the parties did not discuss at any length the various issues currently before the Fact Finder.

The County has submitted comparability information regarding similarly situated employees in surrounding counties. The Union objects and claims that the County's exhibit does not contain any information regarding "full-time" versus "seasonal" Roadside Technicians. However, there is no other comparability information produced by the parties, and the Union did not produce its own comparability information regarding what it claims are similarly situated Roadside Technicians. Therefore, the only comparability data is that submitted by the County. See Summary: Salary and Benefits. The comparability data suggests that no other similarly situated Roadside Technician has any type of holiday, sick leave, or vacation pay. The only county that provides holiday pay, sick leave, and vacations is Shelby County, and the information does not indicate how many Roadside Technicians it employs, if any. See Summary: Salary and Benefits. The only counties that employ Roadside Technicians are Audubon (3), Calhoun (4), Green (3), Ida (1) and Sac (4), all of which offer no holiday pay, sick leave, or vacation pay. As noted, the Union objects to this information, and argues that the exhibit does not distinguish between full-time versus "seasonal part-time" employees for Roadside Technicians. Likewise, the exhibit does not indicate whether any of the surrounding counties are unionized. However, the statute merely requires that a fact finder compare "wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved." Absent any testimony to the contrary, it appears that all Roadside Technicians in the comparability group must perform "seasonal" work: they all apparently maintain county roads, mow grass, plant grass seed, clear brush

off the roads, and spray weeds, all of which generally occurs during warmer weather, and not during the colder winter months. The Union argues that the Roadside Technicians must be considered regular "full-time," because they do not fit within the definitions of "temporary, part-time and summer employees [and] those working one hundred twenty (120) works day or less . . .," as stated in Article 11, page 7 of the current collective bargaining agreement. However, in light of the amendment to include "Roadside Technicians" in the existing unit, the parties will necessarily have to bargain new definitions to accommodate the new classification of "Roadside Technicians" and any other employees that perform "seasonal" work. The Union argued in its summation that at no time in the last 20 or 30 years have the parties discussed the definition of what constitutes a regular full-time employee. With these new employees, that time has now arguably arrived. A collective bargaining agreement under such circumstances cannot be an inflexible document, but one that changes over time to accommodate the issues between the parties. See, e.g., Union Exhibit 2 at page 3 (PERB letter to the parties stating that the parties have a duty to bargain terms specific to the "amended in" employees and how to "treat" the "new" unit classifications "as far as contract coverage is concerned.") This suggests that even PERB contemplated bargaining over how to treat this new group of employees in an existing contract. Accordingly, it is unreasonable for the Union to petition to include the four Roadside Technicians into the existing unit, and then expect these new employees must automatically constitute "full-time" employees subject to full-time benefits. Only Shelby County appears to offer similar employees such benefits. Even the bargaining history does not support this argument, as Mr. Eiten himself testified that Roadside Technicians

historically received merely prorated sick leave and vacations in the past, and longevity pay consistent with other employees. Accordingly, the issue is not as "black and white" as the parties see it. The "Roadside Technicians" clearly perform "seasonal" work, but are not "regular" full-time employees as contemplated in the collective bargaining agreement.

Nonetheless, the Fact Finder believes the new "amended in" employees are entitled to prorated benefits based largely on the past practice and collective bargaining history between the parties.³ Accordingly, the Fact Finder would recommend that the parties offer prorated sick and funeral leave and vacations to its Roadside Technicians (now 9/12 years), and that longevity also be offered consistent with the current collective bargaining agreement based on years of service with the employer.

The past practice and collective bargaining history between the parties indicates that these employees have historically received prorated vacations and sick leave, and that the County similarly offered some prorated benefits in the negotiations when the Roadside Technicians first joined the existing unit. Although the County offered "in season bereavement leave" and something called "personal days," there was no testimony about these benefits historically or compared to other similar public employees. (There is a section entitled "funeral leave" (page 9), but again, there was no testimony at all regarding this benefit, its comparison to other employees, past practice, or collective bargaining history. To the extent it

³ While there is no "collective bargaining" history for the "amended in" employees as they were only included October 16, 2004, there is undisputed past practice of their treatment by the County and/or the Conservation Board. The Fact Finder also believes it is in the public interest and welfare to examine the past practice concerning benefits, and this also constitutes another "relevant" factor in determining which offer is the most reasonable.

constitutes a "leaves of absence," however, it must be considered in this impasse item.) In any event, Fact Finder also finds it is in the public interest and welfare that these Roadside Technicians should receive prorated sick/funeral leave and vacations (9/12), and longevity, consistent with other employees in the bargaining unit. The Roadside Technicians are now part of the larger Secondary Road Department bargaining unit, and having some prorated benefits consistent with past practice and co-workers is consistent with one of the negotiated goals between the parties: "improve and strengthen good will between and among the County and its employees, the Bargaining Unit, and the public." Union Exhibit 4, Article 4(c), page 2. Although these four Roadside Technicians are arguably the highest paid Roadside Technicians in the comparability group, the reason for this ranking was not explained to the Fact Finder nor any testimony produced, and it is difficult to tell if this factor favors either parties' position. Accordingly, based primarily on the past practice and bargaining history of the parties, the public interest and welfare, and ability of the public employer to finance such prorated benefits, the Fact Finder recommends that the Roadside Technicians receive sick leave and funeral leave prorated to the number of months they perform Roadside Technicians work during a calendar year (9/12).⁴

2. Article 14 – Holidays.

A. Crawford County Position. Crawford County proposes no change to the collective bargaining agreement, and proposes that consistent with their seasonal status, that Roadside Technicians should not receive any holidays.

⁴ The record is unclear what type of work the Roadside Technicians perform one day a week in January, February and March.

Crawford County submitted a summary of salary and benefits in comparable counties, and claims that this comparison shows that Roadside Technicians do not receive holiday, sick leave, or vacation in any of the 13 comparable counties, except for Shelby County. According to the County, it is unknown whether any of the Roadside Technicians in any of these other 13 counties are represented by a union or not. The County notes that of the 13 comparable counties, at least six of them do not employ any secondary road or Roadside Technicians, however. (Buena Vista, Carroll, Cass, Harrison, Monona, and Plymouth Counties). See Summary: Salary and Benefits.

In support of its entire fact finding positions, the County also presented financial information. The information indicates that the County has suffered a "large loss of revenue," as the rural valuation over the last several years has declined by nearly \$65 million, resulting in a significantly lower amount of taxes levied. The County notes that it is at the maximum levy rate of 3.95, and has maintained the same levy rate since 2002. See County Exhibit Re: Levy Rate and Taxes Levied. The County also submitted information regarding the tax impact by the seven Crawford County departments, indicating that the fiscal year 2005 and fiscal year 2006 estimated tax revenues are declining. See Tax Impact 2004-2006 by Department.

B. Union Position. The Union is seeking the same holiday schedule for the Roadside Technicians as all other employees currently represented by it. The Union argues that since the Roadside Technicians are not "temporary, part-time, summer employees, or those working 120 work days or less" per year, they are therefore entitled to the same holidays, vacations, sick leave, insurance

benefits or payments of other fringe benefits like any other "regular full-time employee" employed by the County. The Union argues that the Roadside Technicians are regular employees because they have all been working for the County over ten years. The Union argues that these Roadside Technicians are not "seasonal" employees because no such classification exists in the collective bargaining agreement. The Union further notes that in the course of bargaining, it requested the names of all part-time employees for the secondary road department and their gross wages per year. See Union Exhibit 7. The Union claims that the County carefully prepared the list of names and their gross wages for calendar years 2002, 2003, and 2004, but that none of the four Roadside Technicians were listed on the sheet. Therefore, the Union argues that the County "admits" that the four Roadside Technicians are not part-time, and that they therefore must be considered "regular" full-time employees of Crawford County. See Union Exhibit 7 and page 7 of Union Exhibit 4. The Union also disputes the County's comparability data, claiming it does not distinguish between "full-time" and "seasonal" employees.

C. Findings of Fact and Recommendation by the Fact Finder.

There is no past practice or collective bargaining history between the parties regarding Roadside Technicians receiving prorated holidays, and the comparability group proposed by the County indicates that no other Roadside Technician receives holiday pay, except Shelby County. It was not explained to the Fact Finder by either the Union or the County why Roadside Technicians have historically received prorated sick leave and vacations, but not this additional benefit. Under the circumstances, the Fact Finder is reluctant to recommend this benefit. As noted, on the record presented to this Fact Finder, it appears that all

Roadside Technicians by nature of their work and licensure (pesticide application) perform "seasonal" work. There are no other "seasonal employees" or "seasonal" definition in the contract, however, and the employees only joined the unit October 16, 2004. In fact, no party presented any evidence on employee status or classification, and further bargaining over such definitions may prove useful in the future. Accordingly, based largely on the absence of any past practice or collective bargaining history, and comparability to similarly situated employees, the Fact Finder recommends that Roadside Technicians do not receive any holidays.

3. Article 15 – Vacation.

A. Crawford County Position. Crawford County again argues that Roadside Technicians in comparable counties do not receive any vacation pay, except for Shelby County. The Employer argues that only regular full-time employees are entitled to vacation. The Employer also argues its Roadside Technicians are the highest paid of any comparable employers, except Cherokee County. See also positions discussed above.

B. Union Position. The Union seeks vacation "commensurate" with the current contract effective with the date of employee hire. The Union claims that its employees are now part of the bargaining unit and are therefore regular full-time employees. The Union also notes that the Employer's exhibit regarding comparable counties does not reveal whether those employees are seasonal or regular employees. The Union argues that if its employees do not fit within any of the categories contained on page 7 of the collective bargaining agreement, then the Roadside Technicians must constitute regular full-time employees. See also positions discussed above.

C. Findings of Fact and Recommendation by the Fact Finder. For the reasons noted above on sick leave, the Fact Finder similarly recommends that Roadside Technicians receive prorated vacation pay based on the schedules set forth in Article 15. This recommendation is again based largely on past practice and collective bargaining history between the parties, which indicates that Roadside Technicians have historically received prorated sick leave and vacation, and longevity. The County, of course, presented comparability evidence suggesting that only Shelby County provides paid vacation to other seasonal part-time Roadside Technicians. See County Exhibit re: Paid Vacation Seasonal Part-Time Counties with Both Secondary Roads and Roadside Employees. Other counties that have Roadside Technicians, such as Audubon, Calhoun, Greene, and Sac Counties do not offer vacation pay. See Summary: Salary and Benefits. However, the past practice and collective bargaining history, and public interest and welfare, are the primary reasons for his recommendation that Roadside Technicians receive prorated vacation. As noted, there was no testimony to place the comparability data into perspective, nor compare it with the longstanding past practice between the parties regarding prorated sick leave and vacation benefits. It was also not explained to the Fact Finder, in light of the apparently overwhelming comparability information to the contrary, why the County offered any kind of additional benefits to the Roadside Technicians (e.g., bereavement leave and two personal days in season). The County itself labeled this testimony as "bargaining history." That the County offered such benefits is frankly further proof that the County had no ulterior motives for the reorganization and transfer of the employees from the Conservation Board to the County Supervisors, and from regular part-time to seasonal status.

Conversely, the Fact Finder believes that the Union's proposal that employees that work nine months a year should receive the same benefits as employees that work twelve months a year is unrealistic, and not supported by any past practice, collective bargaining history or comparability. Accordingly, based primarily on the past practice and bargaining history, the public interest and welfare, and the ability of the public employer to finance such prorated benefits, the Fact Finder recommends that the Roadside Technicians receive vacation prorated to the number of months they actually work during a calendar year (9/12).

4. Article 17 – Insurance.

A. Crawford County Position. Crawford County does not propose to change any insurance benefits provided to the Roadside Technicians. It argues that the Roadside Technicians are the highest paid in the comparability group. It presented no comparability information regarding insurance coverage for Roadside Technicians (only holidays, sick leave and vacation pay). See also positions discussed above.

B. Union Position. The Union seeks health insurance as provided for in the current contract. The Union argues that the Roadside Technicians are eligible regular full-time employees as stated in the collective bargaining agreement. See also positions discussed above.

C. Findings of Fact and Recommendation by the Fact Finder. Based on the past practice, collective bargaining history and comparability, it is also recommended that the Employer does not need to provide health insurance coverage for Roadside Technicians. Neither party submitted any comparability evidence or collective bargaining history that the matter was ever discussed

between them, nor that any other Roadside Technicians in comparable employers receive this benefit. Accordingly, the Fact Finder recommends no change to this Article.

5. Article 18 – Longevity.

A. Crawford County Position. Crawford County argues no change to the current contract. Crawford County did not present any comparability evidence regarding longevity pay (only holiday, sick leave and vacation). Crawford County argues that it pays its Roadside Technicians the highest pay of comparable counties in the geographic area, with the exception of Cherokee County. See also positions discussed above.

B. Union Position. The Union argues that the Roadside Technicians should receive the same longevity pay as other current employees as set forth in Article 18. The Union argues that the Roadside Technicians are regular full-time employees and should be paid longevity accordingly. The Union also notes that Roadside Technicians formerly received longevity, sick leave, and vacation pay before they were represented by the Union. Roadside Technician Dan Eiten testified that prior to March 1, 2004, the Roadside Technicians worked around 10 of the 12 months, and received prorated sick leave, prorated vacation, and longevity pay. The Union argues that it is equitable that these employees receive similar benefits now. See also positions discussed above.

C. Findings of Fact and Recommendation by the Fact Finder. The parties presented no comparability data on longevity, although it apparently is undisputed that Roadside Technicians have historically received longevity consistent with the schedule set forth in Article 18 of the collective bargaining

agreement. While the Employer argues that the Roadside Technicians are the highest paid in the comparability group, there was no testimony regarding any linkage between the wage scale and longevity pay. Accordingly, based on this past practice and collective bargaining history, and the public interest and welfare, the Fact Finder recommends that Roadside Technicians receive longevity consistent with the schedule set forth in Article 18.

6. Job Classification & Hourly Wage Rates.

A. Crawford County Position. Crawford County proposes a 3% wage increase effective July 1, 2005, and a 3% wage increase effective July 1, 2006, for the Roadside Technicians. The County submitted several exhibits regarding salary and benefits of Crawford County Roadside Technicians as compared to other Roadside Technicians in surrounding counties. The County claims that these other employees are also seasonal employees. The County was unsure whether any of these other counties were organized and represented by unions. In any event, according to the comparability information submitted by Crawford County, the Crawford County employees Roadside Technicians are the highest paid of any Roadside Technicians in the County's comparability group. See Summary: Salary and Benefits.

B. Union Position. The Union also proposes a 3% increase effective July 1, 2005, and a 3% increase effective July 1, 2006. As noted elsewhere, the Union is also proposing a retroactive 3% increase to July 1, 2004. See PERB's July 5, 2005, Order.

C. Findings of Fact and Recommendation by the Fact Finder. Both the County and Union agree on 3% wage increases effective July 1, 2005, and July

1, 2006.⁵ Since the parties both agree on the 3% increases both years, the fact finder will similarly recommend it. This recommendation is based on the comparability to other similarly situated Roadside Technicians, which indicates that Crawford County employees are among the highest paid in the County's comparability group, and the bargaining history of the parties. The bargaining history indicates that both parties have proposed a 3% wage increase effective both remaining years of the existing collective bargaining agreement. The fact finder also believes it is in the public interest and welfare for these employees to receive a wage increase comparable to other similarly situated employees in the State of Iowa. Finally, Crawford County is not making an inability to pay argument. Therefore, based on the agreement of the parties, the collective bargaining history of the parties, a comparison to other public employees doing comparable work, the interest and welfare of the public, and the ability of Crawford County to fund such an increase, the fact finder recommends that the Roadside Technicians receive a 3% increase effective July 1, 2005, and 3% increase effective July 1, 2006.

7. Employment Status: Advancement to Full-Time Employee Status.

A. Crawford County Position. See PERB's July 5, 2005, Order (Case No. 7110).

B. Union Position. See PERB's July 5, 2005, Order (Case No. 7110).

C. Findings of Fact and Recommendation by the Fact Finder.
PERB's July 5, 2005, Order (Case No. 7110) found this issue to be a permissive

⁵ As noted, the parties have negotiated a three year collective bargaining agreement beginning July 1, 2004, with years 2005 and 2006 remaining.

subject of bargaining and stated that the Fact Finder "shall not consider the proposals or parts thereof which we have ruled to be non-mandatory."

8. **Retroactive Wages to July 1, 2004.**

A. **Crawford County Position.** See PERB's July 5, 2005, Order (Case No. 7110).

B. **Union Position.** See PERB's July 5, 2005, Order (Case No. 7110).

C. **Findings of Fact and Recommendation by the Fact Finder.** PERB's July 5, 2005, Order (Case No. 7110) found this issue to be a permissive subject of bargaining and stated that the Fact Finder "shall not consider the proposals or parts thereof which we have ruled to be non-mandatory."

H. SUMMARY OF RECOMMENDATIONS/REPORT

In accordance with the statutory criteria, and for the reasons stated in this report, the fact finder makes the following recommendations regarding the items at impasse:

1. **Article 13 – Leaves of Absence (Sick Leave and "Bereavement [sic]" Leave.** Prorated sick leave and funeral leave only (9/12 year).

2. **Article 14 – Holidays.** No change.

3. **Article 15 – Vacation.** Prorated (9/12 year).

4. **Article 17 – Insurance.** No change.

5. **Article 18 – Longevity.** As provided for in current contract effective with employee date of hire.

6. **Job Classification & Hourly Wage Rates.** 3% effective July 1, 2005; 3% effective July 1, 2006.

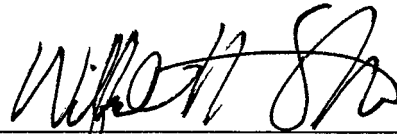
7. Employment Status: Advancement to Full-Time Employee

Status. See PERB's July 5, 2005, Order (Case No. 7110).

8. Retroactive Wages to July 1, 2004. See PERB's July 5, 2005,

Order (Case No. 7110).

Dated this 18th day of July, 2005.



Wilford A. Stone, Fact-Finder
Cedar Rapids, Iowa

CERTIFICATE OF SERVICE

I certify that on the 18th day of July, 2005, I served a copy of the foregoing Report of the Fact-Finder upon the following persons by mailing pursuant to the Iowa Code and the Iowa Rules of Civil Procedure:

Susan M. Bolte
Administrative Law Judge
Iowa Public Employment Relations Board
514 East Locust Street, Suite 202
Des Moines, Iowa 50309-1912

William Ranniger
517 East Street
Manning, IA 51455

D. R. Franck
MUNDT, FRANCK & SCHUMACHER
1231 Broadway, Suite 300
Denison, IA 51442



**FACT FINDING
FINAL OFFER
CRAWFORD COUNTY HIGHWAY AND
ENGINEERING BARGAINING UNIT
FOR
ROADSIDE TECHNICIANS**

TO

**CRAWFORD COUNTY
SECONDARY ROADS DEPARTMENT**

June 24, 2005

- 1. EMPLOYMENT STATUS:
ADVANCEMENT TO FULL TIME EMPLOYEE STATUS.**
- 2. WAGES:
THREE PERCENT (3%) INCREASE RETROACTIVE TO JULY 1, 2004.
THREE PERCENT (3%) INCREASE EFFECTIVE JULY 1, 2005.
THREE PERCENT (3%) INCREASE EFFECTIVE JULY 1, 2006.**
- 3. HOLIDAYS:
HOLIDAYS AS ARE PROVIDED FOR IN THE CURRENT
CONTRACT OF THE CRAWFORD COUNTY HIGHWAY AND
ENGINEERING BARGAINING UNIT.**
- 4. SICK LEAVE:
SICK LEAVE AS IS PROVIDED FOR IN THE CURRENT
CONTRACT OF THE CRAWFORD COUNTY HIGHWAY AND
ENGINEERING BARGAINING UNIT EFFECTIVE WITH THE
DATE OF EMPLOYEE HIRE.**
- 5. VACATION:
VACATION COMMENSURATE WITH THE CURRENT CONTRACT
OF THE CRAWFORD COUNTY HIGHWAY AND ENGINEERING
BARGAINING UNIT EFFECTIVE WITH THE DATE OF EMPLOYEE
HIRE.**
- 6. LONGEVITY:
LONGEVITY AS PROVIDED FOR IN THE CURRENT
CONTRACT OF THE CRAWFORD COUNTY HIGHWAY AND
ENGINEERING BARGAINING UNIT EFFECTIVE WITH THE
DATE OF EMPLOYEE HIRE.**

7. BEREAVEMENT LEAVE:

**BEREAVEMENT LEAVE AS PROVIDED FOR IN THE
CURRENT CONTRACT OF THE CRAWFORD COUNTY HIGHWAY
AND ENGINEERING BARGAINING UNIT.**

8. HEALTH INSURANCE:

**HEALTH INSURANCE AS PROVIDED FOR IN THE CURRENT
CONTRACT OF THE CRAWFORD COUNTY HIGHWAY AND
ENGINEERING BARGAINING UNIT.**

DATE: NOVEMBER 9, 2004

FROM: CRAWFORD COUNTY HIGHWAY AND
ENGINEERING BARGAINING UNIT

TO: CRAWFORD COUNTY BOARD OF SUPERVISORS

RE: SUBMISSION OF ISSUES FOR NEGOTIATIONS

- 1) **WORK STATUS:**
Increase work status from seasonal/part-time to full-time status.
- 2) **BENEFITS:**
Reinstatement of Benefits.
Commensurate with full-time status, i.e.
 - A) Vacation
 - B) Sick leave
 - C) Holidayswith consideration being given to the individual employees
"date of hire."
- 3) **WAGE:**
Wage increase – 3% per annum

**PROPOSAL OF
CRAWFORD COUNTY
FOR
EMPLOYEES ADDED TO
HIGHWAY & ENGINEERING EMPLOYEES
BARGAINING UNIT
FOR 2005-2007 CONTRACTS**

1. The County does not propose to change the work status of the Roadside Technicians.
2. The County does not propose to change the benefits provided to the Roadside Technicians.
3. The County agrees to a 3% wage increase for July 1, 2005 and a 3% wage increase for July 1, 2006 for the Roadside Technicians.

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

RECEIVED
2005 JUL -5 PM 4:09
PUBLIC EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF:

CRAWFORD COUNTY,
Public Employer,

and

CRAWFORD COUNTY HIGHWAY AND
ENGINEERING EMPLOYEES,
Certified Employee
Organization.

CASE NO. 7110

RULING ON NEGOTIABILITY

Fact Finder Wilford H. Stone filed the above-captioned petition for the expedited resolution of a negotiability dispute with the Public Employment Relations Board (PERB or Board) upon the request of Crawford County in accordance with PERB rule 621-6.3(20). The petition seeks the Board's ruling on the negotiability status of two bargaining proposals submitted by the Crawford County Highway and Engineering Employees (the Union) in its proposal to the fact finder.¹

On June 29, 2005, the Board stayed fact-finding proceedings until further order, and both parties submitted briefs prior to the close of business on July 1, 2005.

The parties agree that the proposals at issue, as contained in the Union's "FACT FINDING FINAL OFFER," are as follows:

¹The Board has received by facsimile a copy of the document in which the County requested that the fact finder file the negotiability petition and objected to the submission of the Union's proposal because it allegedly had not been offered in the course of negotiations. The Union's brief similarly suggests that the County has committed prohibited practices by certain conduct. In this case we address only the negotiability of the proposals at issue. Claims that the other party has engaged in illegal bargaining conduct should be raised in the context of prohibited practice proceedings. See *City of Des Moines*, 05 PERB 7031.

Proposal 1

EMPLOYMENT STATUS:

ADVANCEMENT TO FULL TIME EMPLOYEE STATUS.

In *State v. PERB*, 508 N.W.2d 668 (Iowa 1993), the Iowa Supreme Court described the analysis to be applied in examining the negotiability status of proposals under Iowa Code section 20.9:

Whatever the form of the proposal, our only task is to determine whether the proposal, on its face, fits within a definitionally fixed section 20.9 mandatory bargaining subject. See *Clinton Police*, 397 N.W.2d at 766. In determining the scope of the topic of a disputed proposal we look to what the proposal, if incorporated through arbitration into the collective bargaining contract, would bind an employer to do. See *Charles City Community Sch. Dist.*, 275 N.W.2d at 774. We take caution to read proposals literally as they come before us. *Clinton Police*, 397 N.W.2d at 766. "It is not for the PER Board or a court on judicial review to rewrite the parties contract proposals." *Id.* Moreover, we "do not decide whether a particular contract proposal is fair or financially reasonable and leave those determinations to the parties or the arbitrator. . . . We look only at the subject matter and not the merits of the proposals at issue." *Charles City Community Sch. Dist.*, 275 N.W.2d at 769.

State v. PERB, 508 N.W.2d 668, 673 (Iowa 1993).

The County argues that "employment status" is not a mandatory topic listed in section 20.9, and that the proposal is a permissive subject of bargaining. The Union seemingly suggests that the proposal is mandatorily negotiable because it would affect the hours of certain employees, and their eligibility for contractual vacation, holiday, insurance and perhaps other contractual benefits which are listed section 20.9 topics.

The proposal at issue is so abbreviated and imprecise that it is impossible for us to discern precisely what it would require the employer to do, other than to change the "employment status" of some employees. "Employment status" is not among the listed section 20.9 mandatory subjects of bargaining. The Board has consistently found proposals non-mandatory where it is impossible to determine by reading the proposal on its face what it would require the employer to do and thus whether it is within the scope of a mandatory subject of bargaining. See, e.g., *Washington Community School Dist.*, 97 PERB 5691; *Burlington Community School Dist.*, 94 PERB 4925 & 4931. We conclude this proposal is not a mandatory subject of bargaining.²

Proposal 2

At issue is the sentence in bold dealing with a retroactive increase:

WAGES:

THREE PERCENT (3%) INCREASE RETROACTIVE TO JULY 1, 2004.
THREE PERCENT (3%) INCREASE EFFECTIVE JULY 1, 2005.
THREE PERCENT (3%) INCREASE EFFECTIVE JULY 1, 2006.

This proposal, on its face, deals with the retroactive payment of wages for the fiscal year which ended June 30, 2005. The Board has previously determined that the duty to bargain is

² It appears from the Union's brief that its intent in proffering the proposal is to require the County to employ certain workers for more than 120 work days/year (which is apparently the contractual definition of "full-time" employment) rather than seasonally, and to thus effectively require that they receive certain benefits contractually granted to full-time employees. We note that proposals intended to directly relate to section 20.9 topics must be drafted with sufficient specificity that the relationship is apparent on the face of the proposal. Even if we could reasonably read more detail into the proposal, we have previously determined that the number of days/year employees will be employed is a permissive subject of bargaining. See, e.g., *Area I Vocational-Technical School Dist.*, 76 PERB 650.

prospective in nature. In *Des Moines Education Association*, 76 PERB 516, the Board stated:

We believe it clear in the context of the complete bargaining scheme set forth in the Act that the legislature intended the parties to bargain prospectively for the fiscal period which relates to the budget-making process occurring concurrently with negotiations. It is equally evident, therefore, that the duty to bargain does not require that an employer negotiate (or perhaps renegotiate) conditions of employment for the current fiscal year.

The Board has consistently held that "duration" proposals are permissive and that, absent agreement of the parties to the contrary, the statute contemplates one-year contracts, effective concurrent with the employer's fiscal year, noting that the statute suggests a ". . . legislative presumption of bargaining in advance of the annual budget making process and budget submission." See, e.g., *Tri-Center Community School Dist.*, 81 PERB 1918. We note that section 20.9 specifically requires that the parties negotiate with respect to the topics listed in that section at meetings "reasonably in advance of the public employer's budget making process."


Consistent with the cited authority, we conclude that the language at issue here, for wages to be paid retroactively for a fiscal period now completed, is a permissive subject of bargaining.

The stay of fact-finding proceedings previously issued herein is dissolved. Absent agreement of the parties to the contrary, the fact finder shall not consider the proposals or parts thereof which we have ruled to be non-mandatory, and shall issue, serve

and file his report in accordance with PERB subrule 621-7.4(6) not later than 15 days from the date of this ruling.

DATED at Des Moines, Iowa, this 5th day of July, 2005.

PUBLIC EMPLOYMENT RELATIONS BOARD


James R. Riordan, Chair


M. Sue Warner, Board Member


Neil A. Barrick, Board Member

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